

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF BRAWLEY

AND

**TEAMSTERS, CHAUFFEURS, WAREHOUSEMAN,
AND HELPERS LOCAL UNION NO. 542**

July 1, 2012 through June 30, 2013

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A. BASIC RIGHTS

ARTICLE 1 - INTENT

1.1 Pursuant to the Meyers-Milias-Brown Act and Employer-Employee Relations Resolution of the City of Brawley, California, this Memorandum of Understanding has been entered into by the City of Brawley, a municipal corporation, hereinafter referred to as the "City" and Teamsters, Chauffeurs, Warehousemen, and Helpers, Local Union No. 542, Brawley Employees' Association, hereinafter referred to as "Teamsters, Local 542", which is to be in effect during the period of July 1, 2012 through June 30, 2013 . The purpose of this Memorandum of Understanding is the promotion of harmonious relations between the City and the Teamsters Local 542, the establishment of equitable procedures for the peaceful resolution of differences and the establishment of rates of compensation, hours of work, and other matters relating to employment conditions.

ARTICLE 2 – RECOGNITION

2.1 The City continues to recognize Teamsters, Local 542 as the exclusive, recognized employees' organization for the permanent, full-time employees assigned to the classification so listed in Appendix "A" as eligible for membership in and represented by the Association. After consultation with Teamsters, Local 542, any additions or deletions to these classifications shall be furnished to Teamsters, Local 542 by the City.

2.2 City employees who are excluded from the bargaining unit are as follows"

- A. "Management, Confidential, Part-time, or Temporary Employees and other City employees represented by another bargaining unit organized pursuant to the City of Brawley Employer-Employee Relations Resolution.
- B. Disavows its pledge "not to strike against the City".
- C. Ceases to be supported by over half of the local government employees in the bargaining unit for which it is recognized.
- D. Fails to negotiate in good faith with the City.

ARTICLE 3 – NON-DISCRIMINATION

3.1 In receiving the rights afforded by this agreement, no person shall in any way be favored or discriminated against to the extent prohibited by law because of political or religious opinions or affiliations, or because of racial or national origin, or because of age or sex or physical handicap.

3.2 Neither City nor Teamsters, Local 542 shall interfere with, intimidate, restrain, coerce, or discriminate against employees covered by this agreement because of the exercise of rights to engage or not in engage in Association activity.

3.3 Teamsters, Local 542 shall share equally with the City the responsibility for applying this provision of the agreement.

ARTICLE 4 – MANAGEMENT RIGHTS

4.1 Except as otherwise specifically provided in this Agreement, the City has and retains the sole and exclusive rights and functions of management, including, but not limited to, the following:

- A. To determine the nature and extent of services to be performed, as well as the right to determine and implement its public function and responsibility.
- B. To manage all facilities and operations of the City, including the methods, means, and personnel by which the City's operations are to be conducted.
- C. To schedule working hours and assign work.
- D. To establish, modify, or change work schedules or standards.
- E. To direct the working forces, including the right to hire, assign, promote, demote, or transfer any employee.
- F. To determine the location of all plants and facilities.
- G. To determine the layout and the machinery, equipment, or materials to be used.
- H. To determine processes, techniques, methods, and means of all operations, including changes or adjustments of any machinery or equipment.
- I. To determine the size and composition of the working force.
- J. To determine policy and procedures affecting the selection or training of employees.
- K. To establish, assess, and implement employee performance standards, including, but not limited to, quality and quantity standards; the assessment of employee performances; and the procedures for said assessment.

- L. To control and determine the use and location of City property, material, machinery, or equipment.
- M. To schedule the operation of and to determine the number and length of shifts.
- N. To determine safety, health, and property protection measures.
- O. To transfer work from one job to another or from one plant or unit to another.
- P. To introduce new, improved, or different methods of operations, or to change existing methods.
- Q. To lay off employees from duty for lack of work, lack of funds, or any other reason that necessitates layoffs.
- R. To reprimand, suspend, discharge, or otherwise discipline employees.
- S. To establish, modify, determine, or eliminate job classifications.
- T. To promulgate, modify, and enforce work and safety rules and regulations.
- U. To take such other and further action as may be necessary to organize and operate the City in the most efficient and economical manner and in the best interest of the public it serves.
- V. To contract or subcontract construction, services, maintenance, distribution, or any other work with outside public or private entities.
- W. All rights and responsibilities of the City, not specifically modified by this Agreement, are expressly retained by the City.

ARTICLE 5 – TEAMSTERS, LOCAL 542 RIGHTS

5.1 Teamsters, Local 542 representatives shall be designated by Teamsters, Local 542. The number of representatives allowable will be determined in the following manner:

- A. Teamsters, Local 542 may designate one representative per division to perform normal Teamsters, Local 542 representative duties as defined in the contract. Alternates may substitute.

- B. Teamsters, Local 542 shall notify the City, in writing, of the names of the representatives and their respective jurisdictional area at least five working days prior to the effective date of any such designation.

5.2 All representatives shall notify their department head each time they wish to conduct Teamsters, Local 542 business and shall be relieved of duty unless operational demands prohibit granting the request. Use of representatives' time shall not be abused by the employee, and use of said time will not be unreasonably withheld by the responsible supervisor. An alternative Teamsters, Local 542 representative may serve in the absence of the designated representative.

5.3 Teamsters, Local 542 business shall include the investigation of potential grievances, representation of employees at any step of the written grievance procedure at the department level, informal pre-termination hearings, attendance at Teamsters, Local 542/Management meetings, and negotiation of Memorandum of Understanding between the City and Teamsters, Local 542.

5.4 Representatives of Teamsters, Local 542 may communicate with individual employees during the individual employee's work breaks or lunch periods. The conduct of such business shall be such as not to interfere with the individual employee's duties. Said representative must notify the employee's immediate supervisor upon entering the work area in order to identify himself/herself, and to make arrangements to communicate with the particular employee.

5.5 The two members of the Teamsters, Local 542's negotiating committee or their alternates, shall be granted leave from duty, with full pay, for all meetings held for the purpose of negotiating the terms of the Contract when such meetings take place at a time when such members are scheduled to be on duty. Only the two Teamsters, Local 542 members or their alternates may be granted leave, with pay, to attend negotiation sessions.

5.6 The Teamsters, Local 542, Brawley Employees' Association President shall be scheduled reasonable time off, with pay, to accomplish the general Teamsters, Local 542 business. Scheduling of such leave will be at the discretion of the Department Head.

5.7 The City shall provide bulletin boards for use by the Teamsters, Local 542 to enable employees in the bargaining unit to see notices posted thereon when reporting to or leaving their work stations or during their break periods.

5.8 All notices, which appear on the Teamsters, Local 542's bulletin boards shall be posted by and monitored by a designated Teamsters, Local 542 representative, and shall relate to items of interest to the members. Teamsters, Local 542 notices, relating to the following matters, may be posted without the necessity of receiving the City management representatives' prior approval:

- A. Teamsters, Local 542 recreational and social affairs.

- B. Notice of Teamsters, Local 542 meetings.
- C. Teamsters, Local 542 officers and committee appointments.
- D. Notice of Teamsters, Local 542's elections.
- E. Results of Teamsters, Local 542's elections.
- F. Reports of standing committees and independent arms of Teamsters, Local 542.
- G. Publications, rulings, or policies of Teamsters, Local 542.

5.9 Any other notices of any kind not covered by "A-G" above, must receive the prior approval of the City Manager. It is also understood that no material may be posted on bulletin boards, at any time, which contain the following:

- A. Personal attacks upon any other member or any other employee.
- B. Scandalous, scurrilous, or derogatory attacks upon the administration.
- C. Attacks on and/or favorable comments regarding a candidate for a partisan, political office within the City government.

ARTICLE 6 – AGENCY SHOP

6.1 Preamble. This Memorandum of Understanding (MOU) is entered into by the City of Brawley (hereinafter "City") and Teamsters, Local 542, Brawley Employees' Association (hereinafter "Teamsters, Local 542") as a mutual recommendation to the Brawley City Council of the procedures for the initial implementation and subsequent administration of any agency shop arrangement entered into by the parties as authorized by Government Code Section 3502.5(a), (c), (d), (e) and (f) (Meyers-Milias-Brown Act) through amendments effective January 1, 2001 by Senate Bill 739.

6.2 Purpose. The City and Teamsters, Local 542 mutually understand and agree that all affected employees have the right to join or not join Teamsters, Local 542. It is the purpose of this MOU to establish fair and equitable procedures for the determination of any agency shop arrangements which may be properly approved by the City employees in eligible job classifications in the unit represented by Teamsters, Local 542 and to protect the rights and privileges of the employees, Teamsters, Local 542, and the City.

6.3 Excluded employees: Pursuant to G.C. 3502.5(e) an agency shop arrangement shall not apply to management, confidential, or supervisory employees. Therefore, the supervisory employees in the unit are excluded from any requirement to participate in an agency shop arrangement and are not covered by this MOU.

6.4 Identification of Included and Excluded Classes: Employees in classifications in the unit are eligible for inclusion in an agency shop arrangement except for employees in current and future classifications that are supervisory.

6.5 Prior Notification to Employees. Prior to implementation of an agency shop provision agreement pursuant to G.C. Sec. 3502.5(a), the parties shall notify all employees in the applicable unit of the Agency Shop agreement and shall provide sufficient information to fully inform all affected employees of the purpose of the agreement. This notice shall include a full disclosure of the amount of potential union dues and service fees that will be deducted from each employee's pay as a result of the implementation of an agency shop agreement.

6.6 Employees' Responsibilities. Within thirty-one (31) days of employment by the City or thirty-one (31) days following the commencement of an agency shop arrangement pursuant to an agreement, employees shall have the choice of either becoming a member of the union, or of being a non-member and paying a service fee.

6.7 Implementation of Agency Shop

- A. Notice to Employees: Within thirty-one (31) days of the agreement for an agency shop arrangement, the City will provide employees in the unit and any employees hired thereafter into classes in the affected unit with an authorization notice advising them that an agreement has resulted in an Agency Shop arrangement and that all employees must either join Teamsters, Local 542, pay a service fee to Teamsters, Local 542, or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a form for the employee's signature authorizing payroll deduction of Teamsters, Local 542 dues or a service fee, or a charitable contribution equal to the service fee. Affected employees shall have thirty-one (31) calendar days from the date they receive the form to fully execute and return it to the City.
- B. Sufficiency of Employee's Earnings. The employee's earnings must be sufficient, after all other legal and required deductions are made, to cover the amount of the dues or fees authorized. When an employee is in an unpaid status for an entire pay period, no withholding will be made to cover the pay period from future earnings. In the case of an employee in an unpaid status during part of a pay period, whose salary is insufficient to cover the full withholding, no deduction shall be made. All other legal and required deductions, including health care deductions, shall have the priority over dues and service fees.

6.8 Employees' Rights of Conscientious Objection. An employee who is a member of a bona fide religion, boy, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. The employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to the dues, initiation fees, or agency shop fees, to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three of these funds as designated in this MOU.

6.9 Designation of Nonreligious, Nonlabor Charitable Funds. Employees covered by Article 5.3 may designate one of the following nonreligious, nonlabor charitable funds to which his/her applicable payments will be paid:

1. American Cancer Society
2. United Way
3. Any other qualified nonreligious, nonlabor charitable fund designated by the employee.

Declarations of or applications for religious exemption and any other supporting documentation shall be forwarded to Teamsters, Local 542 within fourteen (14) calendar days of receipt by the City. Teamsters, Local 542 shall have fourteen (14) calendar days after receipt of a request for religious exemption to challenge any exemption granted by the City. If challenged, the deduction to the charity of the employee's choice shall commence but shall be held in escrow by the City pending resolution of the challenge. Charitable contributions shall be by regular payroll deductions only.

6.10 Union Membership or Service Fee: Employees shall not be required, as a condition of continued employment, to join Teamsters, Local 542. Instead, an agency shop arrangement requires the employee, as a condition of continued employment, either to join Teamsters, Local 542, or to pay Teamsters, Local 542 a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of Teamsters, Local 542.

6.11 Permissible Use of Service Fee. The service fees charged by Teamsters, Local 542 to non-members covered by an agency shop arrangement is your fair share of the costs of sustaining the Local Union's broad range of programs in support of you and your co-workers. The service fee represents only that portion of Teamsters, Local 542's expenditures devoted to collecting bargaining contract administration, grievances and arbitration, and other matters affecting wages, hours, and other conditions of employment. These are called "chargeable" expenditures and will include for example: the cost of negotiations with employers; enforcing collective bargaining agreements; handling employees' work related problems through informal meetings with employer representatives, the grievance procedure or hearings before administrative agencies;

union administration; and litigation related to any of the above. The service fee is only for “chargeable activity”.

6.12 Payroll Deduction. Teamsters, Local 542 will certify to the City Manager, in writing, the current rate of membership dues. The City will be notified of any change in the rate of membership dues 30 days prior to the effective date of such change. If the City is not notified a seventy-five percent or more increase in Teamsters, Local 542 dues, it may require that each member re-sign dues authorization cards reflecting the amount of increase.

6.13 Prohibited Uses of Service Fees. The service fee collected by Teamsters, Local 542 from non-members shall not include any expenses incurred for political action and organizing expenses.

6.14 Procedure for Challenging Amount of Service Fee. Teamsters, Local 542 agrees to assume full responsibility to insure full compliance with the requirements laid down by the United States Supreme Court in *Chicago Teachers Union v. Hudson*, 106 S. Ct. 1066 (1986), with respect to the constitutional rights of non-member service fee payers. Accordingly, Teamsters, Local 542 agrees to do the following:

- A. Give 60 days advance notice to non-member service fee payers of the amount of the fee and a full explanation of the basis for the fee, including the major categories of expenses, as well as verification of same by an independent auditor.
- B. Advise non-member service fee payers of an expeditious and impartial decision-making process before an impartial decision-maker mutually selected by the parties, whereby non-member service fee payers can object to the amount of the service fee.
- C. Place the amount in dispute into an escrow account pending resolution of any objections raised by non-member service fee payers to the amount of the service fee.

Any dispute concerning the amount of the service fee and/or the responsibilities of Teamsters, Local 542 with respect to service fee payers shall not be subject to the grievance and arbitration procedures contained in a comprehensive Memorandum of Understanding between the parties.

6.15 Financial Reporting Requirements of Teamsters, Local 542. Teamsters, Local 542 shall keep an adequate itemized record of its financial transactions and shall make available, annually to the City the employees who are covered by an agency shop arrangement, within thirty-one (31) days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by a certified public accountant.

6.16 Process for Rescinding Agency Shop. An agency shop arrangement may be rescinded by a majority vote of all the employees in the unit, provided that:

- A. A request for such a vote is supported by a petition filed with the City Employee Relation's Officer containing the signatures of at least thirty percent (30%) of the employees in the applicable unit; and
- B. The vote is by secret ballot; and
- C. The vote may be taken at any time during the term of the Memorandum of Understanding, but in no event shall there be more than one vote taken during any one consecutive one year period the term of that Memorandum of Understanding.

6.17 Union Indemnification. Teamsters, Local 542 shall indemnify, defend, and hold harmless the City and its officials, representatives, and agents against any and all claims, demands, suits, or other forms of liability (monetary or otherwise) and for all legal costs that shall arise out of or by reason of action taken or not taken by the City regarding an agency shop arrangement. If an improper deduction is made, Teamsters, Local 542 shall promptly refund any such amount directly to the employee.

6.18 Effect of Legislative or Judicial Revision, Reversal, or Interpretation. In the event that the agency fee provisions contained in Govt. Code Sec. 3502.5 are reinterpreted, revised, or reversed by action of the California Legislature or by Judicial determinations pursuant to legal challenges, this MOU shall be revised or nullified accordingly in whole or in part.

ARTICLE 7 – SAVINGS CLAUSE

7.1 If any article or section of this Memorandum of Understanding should be found invalid, unlawful, or unenforceable by reason of any existing or subsequent enacted legislation, or by judicial authority, all other articles and sections of this Memorandum shall remain in full force and effect for the duration of this Memorandum.

7.2 In the event of invalidation of any article or section, the City will notify Teamsters, Local 542 within three working days of such invalidation and the City and Teamsters, Local 542 agree to meet within 15 working days for the purpose of renegotiating said article or section.

B. SALARIES

ARTICLE 8 – SALARIES SCHEDULE

8.1 The various classifications of employees shall be compensated in accordance with the City Salary Schedules attached as Appendix “A”.

8.2 **Merit/Step Increases Frozen:** Effective July 1, 2011 through June 30, 2013 no additional Merit/Step pay increases will be authorized by the City. All employees will be frozen at their June 30, 2011 rate of pay.

ARTICLE 9 – OVERTIME

9.1 Employees not exempt from the requirements of the Fair Labor Standards Act (FLSA) will be paid time and one-half for authorized hours worked in excess of forty (40) hours in one (1) week. The following shall be considered paid time off work for the purpose of calculating overtime: vacation leave, sick leave, holiday leave, and compensatory time off. The following shall not be considered for the purpose of calculating overtime: unpaid leave (i.e., unpaid leaves of absence, disciplinary leave, etc.). All overtime work by non-exempt employees must be authorized in advance by the supervisor who will be responsible for the period of overtime. By mutual consent, compensatory time-off may be substituted for overtime pay; provided, that no employee may accrue more than forty (40) hours of compensatory time off.

ARTICLE 10 – CALL BACK PAY

10.1 Employees covered by this agreement shall be entitled for a one (1) hour minimum for reporting to work after the completion of a normal work day, which will be computed at time and one half after 40 hours have been worked in any work week.

ARTICLE 11 – SHIFT DIFFERENTIAL

11.1 Shift Differential is defined as the amount of compensation authorized to be paid to an employee above his/her regular straight time hourly rate of pay for working a regularly scheduled shift other than a day shift. Overtime not included.

11.2 Only the following classifications shall earn a shift differential:

- A. Water Plant Operators working 4:00 p.m. to midnight shift shall earn a shift differential at 2½% of their base salary.

- B. Water Plant Operators working the midnight to 8:00 a.m. shift shall earn a shift differential of 5% of their base salary.
- C. Street Sweeper Operators working a shift from 11:00 p.m. to 7:00 a.m. shall earn a shift differential of 5% of their base salary.

ARTICLE 12 – STAND-BY PAY

12.1 Employees required to be on standby will earn one hour for each 24 hours of standby time, which will be computed at time and one half after 40 hours has been worked in any work week.

12.2 Utility Workers of the Public Works Department required to be on standby for seven (7) consecutive days shall be paid in accordance with Article 10 and Article 12, or an amount equal to sixteen (16) hours at time and one-half, whichever is greater.

ARTICLE 13 – MOVE-UP PAY

13.1 Any employee who works four (4) shifts during any fiscal year at the same higher job classification shall be paid at the basic rate of pay of that position when he/she commences work on the fifth shift acting in that position, provided that the increase shall be at least a one step increase. All move up assignments will be specifically designated by the City and a record of such assignments maintained in each department.

ARTICLE 14 – PROMOTIONS

14.1 Consistent with the best interests of the City, vacant or new higher level positions in the competitive service shall be filled by competitive examination with preference to qualified in-house applicants. In-house applicants eligible for promotion include those applicants employed by the department and those employed in other City departments with preference in that order. All promotional applicants must meet City and job description minimum qualifications to be qualified for the competitive examination process.

In-house applicants must meet the minimum qualifications specified in the position description, unless waived by the City Manager. Should no in-house qualified applicants pass the combination of written and oral examinations, the position may be filled by open recruitment and examination.

14.2 – Reclassification – Will allow water and wastewater operators promotion for higher certificates.

ARTICLE 15 – STEP/MERIT INCREASES

- 15.1 Step advancement shall be as follows:
- A. Employees shall advance to Step 2 of the basic salary schedule after successfully completing one (1) year of satisfactory performance as documented on employee performance appraisal forms.
 - B. Employees shall advance to Step 3 of the basic salary schedule after one (1) year at Step 2, based upon satisfactory performance as documented on employee performance appraisal forms.
 - C. Employees shall advance to Step 4 of basic salary schedule after one (1) year at Step 3 based upon a pattern of above average performance.
 - D. Employees shall advance to Step 5 of the basic salary schedule after one (1) year at Step 4, based upon a pattern of meritorious performance as documented on employee performance appraisal forms.
- 15.2 All increases shall be effective on the date of eligibility.
- 15.3 **Merit/Step Increases Frozen:** Effective July 1, 2011 through June 30, 2013 no additional Merit/Step pay increases will be authorized by the City. All employees will be frozen at their June 30, 2011 rate of pay.

ARTICLE 16 – COMPENSATORY TIME OFF (COMP TIME)

- 16.1 Compensatory Time is that time off earned by an employee in lieu of overtime pay.
- 16.2 Compensatory Time Off shall be scheduled at the discretion of the Department Head in consultation with the employee. Scheduled time off shall not be the cause of incurring additional overtime pay.
- 16.3 Advancing Comp Time is not permitted.
- 16.4 An employee may use his/her Comp Time to extend his vacation time with the approval of the Department Head. The Department Head shall not unreasonably deny use of Comp Time to extend an employee's vacation period.

C. FRINGE BENEFITS

ARTICLE 17 – HOLIDAYS

17.1 All employees covered by this agreement shall be entitled to the following authorized holidays:

1. January 1 – New Year’s Day
2. Third Monday in January – Martin Luther King, Jr. Day
3. Third Monday in February – Presidents’ Day
4. Last Monday in May – Memorial Day, Observed
5. July 4th – Independence Day
6. First Monday in September – Labor Day
7. November 11th – Veteran’s Day
8. Fourth Thursday in November – Thanksgiving Day
9. Day after Thanksgiving
10. December 24th - Christmas Eve
11. December 25th – Christmas Day
12. New Year’s Eve
13. One Floating Holiday

17.2 When a holiday falls on a Sunday, the succeeding Monday will be observed. When a holiday falls on a Saturday, the preceding Friday will be observed.

17.3 Any employee who is regularly scheduled to work on a holiday shall receive pay for all hours worked, in addition to the paid holiday or another day off at employee’s option. The holiday will be paid at the end of the fiscal year if not used.

17.4 Any employee who is scheduled to be on-call (stand-by) on one of the twelve scheduled holidays may take an alternate day off, not compensatory time, within the following four (4) weeks or preceding week of the holiday.

ARTICLE 18 – CLOTHING ALLOWANCE

18.1 Each employee listed in this Memorandum of Understanding and required to wear a City uniform shall receive a clothing allowance of six (6) new uniforms (pants and shirts) to be provided by the City each year during January. Employee, with Department Head’s approval, may choose among the styles or materials offered by the supplier as compatible with the basic uniform. Cold weather jackets shall be furnished on an “as needed” basis as determined by the Department Head, to a maximum of one jacket per year.

ARTICLE 19 – VACATION

19.1 The term “vacation week” shall mean five days out of a calendar week of seven days. A vacation month is a calendar month, regardless of length.

19.2 Only full-time, permanent employees listed in the appendix of this MOU shall be eligible for vacation benefits.

19.3 Regular, full-time employees will receive vacation benefits in accordance with the following schedule:

- A. Employees with one year (12 months) to five years (60 months) of employment shall be entitled to two vacation weeks per year earned in monthly increments at the rate of 6.7 hours vacation leave per month (80 hours per year or 10 [8 hr.] days).
- B. Employees with more than five years (61 months) up to fifteen years (180 months) of employment shall be entitled to three vacation weeks per year, earned in monthly increments at the rate of 10.0 hours vacation leave per month (120.0 hours per year or 15 [8 hr.] days).
- C. Employees with more than fifteen years (181 months or more) of employment shall be entitled to four vacation weeks per year, earned in monthly increments at the rate of 13.4 hours vacation leave per month (160.8 hours per year or 20 [8 hr.] days).

19.4 Vacation will continue to accrue to five times an employee's annual entitlement.

19.5 Vacation leave must be used in a minimum one-half (1/2) day increments.

19.6 Employees leaving the service of the City shall be paid in a lump sum for unused vacation up to a maximum of two years.

19.7 The purpose of vacation benefits is to allow each employee time away from his/her job for rest, recreation, and pursuit of non-employment objectives. The time when vacation leave shall be taken will be determined by the City after considering department operational needs and the seniority and wishes of the employees.

Where there is need to maintain continuous service or staff telephones in a particular situation, a coordinated staff schedule, developed by supervisors, may be necessary to provide service without interruption.

19.8 An employee's vacation shall vest as of the completion of their probationary period. Vacation leave may be granted after successful completion of probation.

ARTICLE 20 – SICK LEAVE

20.1 Full-time, permanent employees listed in this MOU shall earn sick leave for the purposes specified in this Article at the rate of one eight (8) hour work day for each calendar month or on a prorated basis for periods of less than one month.

20.2 Sick Leave may be accumulated without limit.

20.3 Sick leave shall not be considered as a right which an employee may use at his/her discretion. It shall be allowed only in the case of necessity and actual personal sickness and disability.

20.4 The employee shall notify his/her supervisor of illness at least one (1) hour prior to his/her scheduled reporting time. Such notification is required to be eligible for sick leave compensation.

20.5 The practice of advancing sick leave shall not be permitted. Upon approval of the Department Head or designee, accrued sick leave shall be granted to an employee only:

- A. When incapacitated to perform job duties due to illness, injury, pregnancy, or childbirth.
- B. When receiving required medical or dental treatment or examination.
- C. Upon incapacitating illness, injury, or death in the immediate family. A maximum of five days per fiscal year may be taken for this purpose.

20.6 Sick Leave may be used up to a maximum of three work days, five days for funerals out of the area including the day of the funeral, by employees who are required to absent themselves from work to attend the funeral of a member of their immediate family (defined as a spouse, parent, sibling, child, grandchild, and grandparent). One day of sick leave may be used for a death in the spouse's immediate family, three days if the employee is responsible for making funeral arrangements.

20.7 Evidence in the form of a physician's certificate may be required by the Department Head or designee when there is one absence in excess of three days or more, and when there is reason to believe the sick leave privileges are being abused. The City Manager Department Head may disallow sick leave if adequate certification of illness is not presented by the employee.

20.8 No City employee shall be entitled to sick leave, with pay, while absent from duty for the following reasons:

- A. Disability arising from sickness or injury purposely self-inflicted or caused by any of his/her own willful misconduct, including intoxication or the result therefrom.

- B. Sickness or disability sustained while on Leave of Absence other than regular vacation leave or sick leave.
- C. Disability or illness arising from compensated employment other than the City of Brawley.
- D. Termination of the employee's continuous service except by reason of layoff, lack of work or funds, shall abrogate all sick leave accrued to the time of termination, regardless of whether or not such person subsequently reenters the City's service. No payment shall be made to any employee for unused sick leave accumulated to his/her credit at the time of his/her termination with the City except as covered in the following manner:
 - 1) Employees with a minimum of fifteen years of service shall upon retirement receive payment in the amount of 25% of the unused accumulated sick leave. Upon the death of an active employee, with 15 years or more service, 25% of this unused accumulated sick leave shall be paid to his/her estate.
 - 2) Employees eligible to receive buy-back shall be allowed to do so as outlined below.

20.9 Any employee absent at the start of his/her shift due to illness or injury who recovers sufficiently during the course of his/her shift and is able to report to work is required to do so. In such a situation, the employee involved shall only be charged for actual sick leave used to the nearest half-hour.

20.10 Paid sick leave shall be counted as time worked for the purpose of computing sick leave and vacation pay.

20.11 Any employee absent due to illness or injury for a period in excess of six (6) working days must contact his/her department head not less than once per calendar week to advise the department head of the employee's status, to be brought up to date on departmental activities and to inform the department head of the continued expectation of the employee's disability from employment. Failure to contact the department head as required in this section may result in discipline up to and including termination.

Bereavement

- A. Section 1 – Whenever an employee is absent from work because of a death in the immediate family, he/she shall be entitled to three (3) paid working days. The immediate family shall be any of the following: Father, Father-in-law, Mother, Mother-in-law, sister, sister-in-law, brother, brother-in-law, wife, husband, son (includes stepson), daughter (includes stepdaughter), grandmother, grandfather, daughter-in law, and grandchildren.

- B. The granting of this leave shall not affect the employee's vacation or sick leave.
- C. All bereavement leave must be reported on payroll sheets and approved by the Department Head, with an indication of the relationship of the deceased family member. Upon request, a death certificate shall be supplied.

ARTICLE 21 – SICK LEAVE BUY-BACK

21.1 All employees who have accumulated unused sick leave of twenty-four days or more may elect to receive payment for one-half of unused sick leave accumulated in the immediately preceding twelve month period, provided that the person did not use more than three sick days in the preceding twelve month period, instead of further accumulating such unused sick leave. A minimum of 24 (8 hour) days unused sick leave must be maintained after such payment is made.

21.2 In the event an employee elects to receive payment for unused sick leave as provided herein, such payment shall constitute use of sick leave for the purpose of computing amounts to which such employee may be entitled for unused accumulated sick leave upon retirement.

ARTICLE 22 – CATASTROPHIC LEAVE

22.1 Vacation credits may be transferred from one or more eligible City employees to another City employee, on an hour for hour basis (proration to and administered by the Finance Director), in accordance with Departmental guidelines and approval, and upon the request of both the receiving employee and the transferring employee, under the following conditions:

- A. The receiving employee is required to be absent from work due to injury or the prolonged illness of the employee, has exhausted all earned leave credits, including but not limited to sick leave, vacation, and compensatory time, and is therefore facing financial hardship.
- B. The transfer must be for a minimum of four hours and in whole hour increments thereafter. Transfers may be "metered" by the appointing authority.
- C. The total vacation credits received by an employee shall not normally exceed 520 hours; however, if approved by his/her appointing authority, the total vacation credits in excess of 1,040 hours will be considered on a

case by case basis by the appointing authority subject to the approval of the City Manager.

- D. The transfers are irrevocable, and will be indistinguishable from other vacation credits belonging to the receiving employee. Transfers are subject to all taxes required by law.
- E. Transfers shall be administered according to the rules and regulations of the City's Finance Director, and made on a form prescribed by the Finance Director. Approval of the appointing authority will be provided on such forms.

22.2 This program is not subject to the Grievance Procedure of the current Memorandum of Understanding.

ARTICLE 23 – RETIREMENT

23.1 The City will continue to contribute its share to the Public Employees' Retirement System (PERS) according to the effective rate as set by the Public Employees' Retirement System.

23.2 The City will continue to contribute the employees' share to the Public Employees' Retirement System (PERS) effective June 30, 1989.

23.3 Effective June 30, 2001, employees shall become eligible, subject to PERS rules, for 2% @ 55 Modified Formula for Local Miscellaneous Members one year final compensation.

ARTICLE 24 – LONGEVITY PAY

24.1 Both parties recognize that the step/merit pay plan contained in Article 7, incorporates a longevity pay principle, and that neither party feels any group of employees in the Association should enjoy any greater benefits than any other group of employees covered by this MOU. It is the intent of the parties that no position listed in this MOU's shall be entitled to longevity pay benefits which were reflected in previous MOU's between the parties.

ARTICLE 25 – GROUP INSURANCE

25.1 To be eligible for group insurance, an employee must:

- A. Occupy a permanent, full-time budgeted position.

B. Work at least 40 hours per week.

C. Meet the necessary qualifying periods associated with the insurance program.

25.2 As part of the flexible benefits plan, which is in accordance with Section 125 of the Internal Revenue code, is available to eligible employees. Part of that plan includes a City paid monthly amount towards the cost of health care insurance:

Employee Only	\$273.84
Employee + One	\$549.26
Employee + Two or More	\$703.67

25.3 Teamsters, Local 542 agrees to participate in a committee composed of representatives of the various associations and unrepresented employees. This committee shall have members who have a range of interests (i.e., single person(s) to individuals with children and/or spouses) in an attempt to have a balanced committee.

The purpose of this committee will be to determine the benefits, premiums, carrier, and payment schedule of the health care plan. The goals of the committee will be to decrease costs, not to decrease benefits, and to have the most responsible carrier.

25.4. A representative from Teamsters, Local 542 will participate on a "City Insurance Committee" to determine the Section 125 Plan content pursuant to the attachment. Implementation of the 125 Plan will be subject to approval by Teamsters, Local 542 and the City.

25.5 In the event that the agreement cannot be reached on the content of a 125 Plan on or before June 30, 2001, the City's Health insurance contributions shall continue as shown in paragraph 25.2 and 25.3 above.

ARTICLE 26 – WORKERS' COMPENSATION

26.1 An employee receiving temporary total disability payments under the Workers' Compensation laws for an on-the-job injury, occurring while employed by the City of Brawley, may use accumulated sick leave in order to continue to maintain his/her regular income. The City will deduct one-half day per working day of absence from the employee's sick leave and the remainder will be paid as regular hours. However, all employees receiving full salaries in lieu of temporary disability payments, pursuant to the Labor Code, are entitled to accumulate sick leave during such periods of disability.

26.2 When accrued sick leave has expired, if the employee is still unable to work because of disability, he/she will be permitted to use his/her accrued vacation leave as sick leave. Subsequent to the expiration of both the employee's sick and vacation leave, , employee shall receive no additional compensation from the City including the health benefits allowance.

26.3 The City will follow California State Workers' Compensation Law with all employee workers' compensation claims and absences due to work related injuries.

ARTICLE 27 – MILITARY LEAVE

27.1 Military Leave shall be granted in accordance with the provisions of State Law. Every employee entitled to receive the benefits of military leave shall give his/her Department Head the opportunity, within limits of military necessity, to determine when such leave shall be taken.

27.2 Any employee of Teamsters, Local 542 who is or becomes a member of any Military Reserve or California National Guard shall be given time off without loss of pay to attend their Reserve two week annual active duty requirement.

ARTICLE 28 – COURT LEAVE

28.1 Any employee required by the City to appear in any court as a juror, witness in a criminal case, or witness in a civil case during his/her work shift for the purpose of giving testimony, shall receive full compensation as though he/she were actually on the job during such time.

He/she shall claim any jury, witness, or other fee to which he/she may be entitled by reason of such appearance, and pay the same over to the City Treasurer to be deposited in the applicable fund of the City, with the exception of any mileage reimbursements. Employees appearing in court, for the above stated reasons on scheduled days off, shall retain any and all remuneration as may be authorized for such appearance. Notation will be made on the time card for the days of court leave granted to the employee while absent from his/her regular scheduled duties. If the employee is not selected for jury duty or is released from testimony, he/she shall return to duty if released during scheduled work shift hours. In those cases where an employee elects to retain jury duty or witness fees, such time shall not be counted as time worked.

28.2 No civil case shall be covered by this Article in which the employee has interest. Voluntary jury duty is not covered by this Article.

ARTICLE 29 – USE OF CITY FACILITIES

29.1 Teamsters, Local 542 may, with the prior approval of the City Manager be granted the use of City facilities for meetings of City employees, provided space is available, and provided further that such meetings are in accordance with Teamsters, Local 542 Rights Article. The City reserves the right to assess reasonable charges for the use of such facilities. The use of City equipment other than items normally used in the conduct of business meetings, such as desks, chairs, ash trays, and black boards is strictly prohibited. The presence of such equipment in an approved City facility notwithstanding.

ARTICLE 30 – ACCESS TO WORK LOCATIONS

30.1 Reasonable access to employee work locations shall be granted officers of Teamsters, Local 542 and their officially designated representatives, for the purpose of processing grievances or contacting members of the organization concerning business within the scope of representation. Such officers or representatives shall not enter any work location without notifying the Department Head or City Manager. Access shall be restricted so as not to unduly interfere with the normal operations of the department or with established safety or security requirements.

30.2 Solicitation of membership and activities concerned with the internal management of an employee organization; such as collection of dues, campaigning for office, conducting elections, and distributing literature, shall not be conducted during working hours.

ARTICLE 31 – TUITION REFUND PROGRAM

31.1 Purpose. The purpose is to enable the employee to meet the standards of his/her current position and to prepare the employee for advancement to the next highest position classification above the one he/she currently occupies.

31.2 Eligibility Rules. Eligible employees will be reimbursed 100% of the tuition for fees for textbooks and supplies under certain conditions, up to a limit of \$250 per fiscal year for professional and technical courses offered by accredited colleges, universities, business, trade, or correspondence schools or by an otherwise accepted trade professional association or institute, as determined by the City.

Conditions under which reimbursement may be approved are as follows:

- A. The course work must relate to the applicant's present position or must be beneficial to the employee's City related professional development, or must enhance career advancement potential within the City as follows:
 - 1) An improvement in skills or knowledge required by the present position.

- B. Requests for reimbursement must be approved by the Department Director concerned and the City Manager before enrollment in the course.
- C. Reimbursement will be made for tuition fees and/or required textbooks as verified by the Department Head and the City Manager by receipts, etc., upon completion of the course with a grade of at least "C", "Satisfactory", "Pass", or the equivalent.
- D. The employee must have completed six months of City service in a regular budgeted City position.
- E. The minimum amount of tuition reimbursement which will be approved for any employee is \$5.00 per course.
- F. The employee must not be receiving funds for the same course from any source; such as veterans' benefits, scholarships, etc.

31.3 Request and Reimbursements – Procedure. Requests for authorization to enroll under the Tuition Refund Program and requests for reimbursement shall be on the forms provided and follow the procedure prescribed by the City.

The employee must stay in City employment for a certain length of time in return for training as follows:

- 30 credits – 1 year
- 60 credits - 2 years
- 90 credits – 3 years
- 120 credits – 4 years

Employees not meeting the requirements- contained in this paragraph shall have the subject reimbursed costs deducted from their final pay check.

ARTICLE 32 – SOCIAL SECURITY

32.1 The City will continue to pay the federally required share of employees' salary to F.I.C.A.

D. WORKING CONDITIONS

ARTICLE 33 – SAFETY EQUIPMENT

33.1 The City agrees to provide, to appropriate personnel, all safety equipment including, but not limited to, dust masks, hard hats, heavy duty rain gear, hazard vests, protective leather aprons, gas masks, heavy duty gloves, and industrial jackets.

33.2 In addition, the City will repair safety shoes and replace, if necessary, one pair of safety shoes (at a cost not to exceed \$150.00) per fiscal year for each employee required by the City to wear safety shoes. The Department Head will make the determination as to when and if replacement or repairs are necessary. In the event that an employee required to wear safety shoes, for safety reasons, but is unable to wear such shoes because of a certified medical condition, that employee will be considered unable to perform his/her assigned duties.

ARTICLE 34 – AUTOMOBILE ALLOWANCE

34.1 Any employee who is required to use his/her personal automobile in the course of his/her employment with the City shall be reimbursed for each mile actually traveled on official business in any one calendar month at the following rate: according to the current City travel policy.

34.2 Any officer or employee who is required to travel in the performance of his/her duties or to attend an authorized meeting or conference outside of Imperial County, which is of benefit to the City, shall be reimbursed for reasonable expenses incurred for transportation, meals, lodging, and incidentals.

34.3 No allowance shall be made for transportation between the employee's home and the place where such person is normally employed by the City.

34.4 All travel and reimbursement expenses must be approved, on the form prescribed, in advance, by the Department Head and the City Manager.

ARTICLE 35 – LEAVE WITHOUT PAY

35.1 Leaves of Absence without pay not to exceed ninety (90) calendar days may be granted upon establishment of reasonable justification in instances where the work of the City will not be handicapped by the temporary absence of the employee. Request for such leaves must be in writing. Granting such leave will depend upon all relevant circumstances including length and suitability of performance, prior leaves, attendance records, employee evaluations, and the operating needs of the department. A second ninety-day leave may be extended in extraordinary circumstances. A leave will not be approved for an employee for the purpose of seeking employment outside the service of the City. Leave Without Pay may not be granted until all accumulated annual leave and compensatory time is used.

ARTICLE 36 – PROBATIONARY PERIODS

36.1 Probationary periods for new employees and new promotions will be for six (6) months, or longer, as specified at the time of appointment. This is to permit both the

supervisor and the employee to become acquainted and to determine the adaptability and fitness of the employee of the assigned work, and to reject any employee whose performance does not meet the required work standards.

36.2 All employees will be evaluated twice during the probationary period, at the mid-point of probation and prior to the end of the probationary period.

ARTICLE 37 – PERSONNEL LAY-OFF PROCEDURE

37.1 The City and Teamsters, Local 542 agree that reduction in personnel, as it pertains to employees covered under the provisions of this contract, shall be as hereinafter prescribed. When City-funded positions of indefinite duration and which are presently filled are abolished, reduction shall be accomplished in accordance with the following provisions:

- A. Temporary and probation City funded positions, within the Department shall first be eliminated.
- B. Personnel eligible to receive maximum percentage retirement benefits under the Public Employees Retirement System may then be retired.
- C. The determination regarding a lay-off shall be based on the following criteria:
 - 1) The relative ability and qualifications of the employees as determined by the City within the affected classifications of the affected department to be reduced.
 - 2) The relative seniority of the employees in the City in the affected classification within the given department. In the event the relative ability and qualifications are substantially equal, relative seniority shall prevail.
- D. All personnel who are affected by the lay-off shall have the right to elect a reduction in grade to a lower classification in the same department that they are qualified to fill through previous service in that classification in that department, providing a position vacancy exists.
- E. An employee shall not be laid off before the employee has been made a reasonable offer of reassignment, if such offer is immediately possible, either due to a lay-off of personnel or due to an increase in a number of persons to be employed in that other department. City personnel, about to be reduced in force, shall be given preference for such jobs over applicants from outside the City, if the City employee has the qualifications, skills, and experience required for that job. In the event more than one current

employee of the City submits an application for the same vacancy, the selection shall be made by the City on the basis of the same criteria set forth in Section 37.1-C above.

- F. As a result of the application of this reduction in force procedure, the City may cause the reassignment, transfer, reduction in grade, or any combination thereof, with a lay-off of an employee.
- G. Upon rehire or re-employment of a former employee, within 1 year, said employee shall receive the seniority that the employee had from the date of original hire plus the period of time that the employee was laid off.
- H. Separation under this rule shall require the giving of at least two weeks notice to the employee, or payment in lieu of notice, of an equivalent amount of the employee's base salary by the City.

ARTICLE 38 – BASIC WORK PERIOD

38.1 The official work week shall be a seven day period as established by the City. Nothing contained herein shall be construed as limiting or preventing the City from establishing other work shifts as the need arises.

38.2 Nothing herein shall be construed to limit the authority to make temporary assignments to different or additional locations, shifts, or work duties for the purpose of meeting emergencies.

ARTICLE 39 – LEGAL REPRESENTATION

39.1 Upon request of an employee and subject to any limitations provided by law, the City will provide for the defense of any civil action or proceeding initiated against the employee by a person or entity other than the City in a court of competent jurisdiction, on account of any act or omission occurring within the course and scope of his/her employment as an employee of the City.

39.2 Nothing herein shall be deemed to require the provision of such defense where the discretion to provide or not to provide such defense is vested in the City pursuant to the provision of the California Government Code, or where the act or omission was not within the scope of the employee's employment, or the employee acted or failed to act because of actual fraud, corruption, or actual malice, or where the provision of such defense would create a conflict of interest between the City and the employee.

39.3 Nothing herein shall be construed to grant to any employee any rights or privileges in addition to those provided in the said Government Code.

ARTICLE 40 – LIGHT DUTY

40.1 Light Duty is limited to employees receiving on-the-job injuries.

40.2 The City will provide light duty or alternative jobs when medically and operationally appropriate.

ARTICLE 41 – REST PERIODS

41.1 A 15-minute rest shall be permitted in the morning and another in the afternoon, except where employee is on an 8-hour or more continuous shift and has ample time for meals and rest periods during regular shift. Where there is a need to maintain continuous service or man telephones in a particular situation, a coordinated staff schedule, developed by supervisors, may be necessary to provide service without interruption.

ARTICLE 42 – OUTSIDE EMPLOYMENT

42.1 No employee may engage in outside employment unless such employment is approved by the City Manager. Each employee engaged in outside employment shall file a Notice of Intent to continue such employment prior to December 31st of each year.

E. SOLVING PROBLEMS

ARTICLE 43 – TEAMSTERS, LOCAL 542/MANAGEMENT MEETING

43.1 A committee of the City and Teamsters, Local 542 (not to exceed three employees) may meet on mutually agreed dates and shall be for the purpose of:

- A. Discussing the administration of this agreement.
- B. Exchanging general information of interest to the parties.
- C. Giving Teamsters Local 542's representatives the opportunity to share the views of their members and/or make suggestions on subjects of interest to their members.

43.2 As a courtesy and to facilitate the adjustment of work schedules, Teamsters, Local 542's representatives will personally notify their immediate supervisors of the dates and times of such meeting immediately upon the parties reaching mutual agreement as to the date of any such meeting.

43.3 Teamsters, Local 542 committee members shall not lose pay nor be eligible for any overtime payment for time spent in any meetings authorized by the provisions of this Article.

ARTICLE 44 – ADVANCE NOTICE

44.1 The City shall give reasonable advance written notice to Teamsters, Local 542 of any proposed change or new ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council or by any board or commission of the City and Teamsters, Local 542 shall be given the opportunity to meet with the City Manager or his/her representative prior to adoption. In cases of emergency when the City or any board or commission of the City determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with Teamsters, Local 542, the City or the board or commission of the City shall provide such notice and opportunity to meet at the earliest practical time following adoption of such ordinance, rule, resolution, or regulation.

ARTICLE 45 – GRIEVANCE PROCEDURES

45.1 A grievance is a dispute between an employee and the City relating to:

- A. The meaning, interpretation, or application of the express provisions of the MOU, the City's Personnel Rules & Regulations, or the City's Employer/Employee Relations Resolution or other City policies or procedures which the employee feels has adversely affected his/her employment.
- B. Discrimination on the basis of race, color, religion, creed, physical handicap, medical condition, age, national origin, ancestry, marital status, and sex.
- C. Disciplinary actions.

45.2 Those areas which are excluded from the scope of this procedure are as follows:

- A. Matters which are within the exclusive jurisdiction of another agency, (i.e., disputes regarding Worker's Compensation benefits, health insurance coverage, etc.).
- B. Management Rights—although an employee may file a grievance over the manner which a management right has been exercised, he/she may not grieve the issue of whether or not a particular action is a management right.
- C. Policies, practices, and procedures related to the recruitment, testing, and/or selection of employees.

45.3 Scope. This grievance procedure shall be used to resolve every grievance for which no other method of solution is required by law.

45.4 General Procedures. The grievance shall be presented either by the employee affected or by a representative of his/her choosing.

45.5 Objectives. This grievance procedure is established to accomplish the following objectives:

- A. To settle the disagreement at the employee-supervisor level, if possible.
- B. To provide an orderly procedure to handle the grievance, through each level of supervision if necessary.
- C. To resolve the grievance as quickly as possible.
- D. To correct, if possible, the cause of the grievance to prevent future similar complaints.
- E. To reduce the number of grievances by allowing them to be expressed, thereby, adjusting and eliminating grievances.
- F. To promote harmonious relations among employees, their supervisors, and the departmental staff.
- G. To insure fair and equitable treatment of all employees.

45.6 Informal Complaint Procedure. Informal complaint disposition shall precede the use of the formal grievance procedure. The employee who has a complaint shall discuss his/her complaint with his/her immediate supervisor no later than ten (10) working days after the occurrence of the incident causing the complaint. If the immediate supervisor fails to reply to the employee within five (5) working days after the

complaint is discussed or the employee is not satisfied with any decision, the employee may utilize the formal grievance procedure.

45.7 Formal Grievance Procedure.

- A. The formal grievance procedure shall be initiated no later than ten (10) working days after the cessation of informal complaint disposition.
- B. The formal grievance shall be initiated by the filing of a written grievance, within the time period set forth above, which will include the following information (the Teamster Grievance form is acceptable):
 - 1) Name of grievant.
 - 2) Class title.
 - 3) Department.
 - 4) Grievant's mailing address.
 - 5) A clear statement of the nature of the grievance, citing applicable ordinance, rules, regulations, or action.
 - 6) The date upon which such grievance occurred.
 - 7) The action taken as a result of the informal complaint procedure.
 - 8) A proposed solution to the grievance.
 - 9) Date of execution of the grievance form.
 - 10) Signature of the grievant.
 - 11) The name of the organization, and/or the name of the paid Teamsters, Local 542 employee representative, and/or an attorney who has passed the California Bar and who will be retained by the grievant and/or Teamsters, Local 542, followed by the signature of the organization, and/or the signature of the paid Teamsters, Local 542 employee representative, and if applicable the signature of the attorney.
- C. Said written grievance shall be filed with the Department Head, and he/she shall investigate the grievance and shall confer with the grievant, his/her representative, and any other employee or employees involved, in an attempt to resolve the grievance. Within ten (10) working days after the written grievance is first submitted to the Department Head, said Department Head shall make and file a decision in writing.
- D. If the grievance is not resolved by the Department Head to the satisfaction of the grievant, he/she may, within five (5) working days from receipt of the Department Head's decision, request consideration of the grievance by the City Manager by so notifying him/her in writing. Within ten (10) working days after such notification the City Manager shall investigate the grievance, confer with all persons affected and involved, and grievant's representative, and render a decision in writing.

- E. If the decision of the City Manager resolves the grievance to the satisfaction of the grievant, said decision shall be final and shall bind the City of Brawley, the City Council, and the individuals involved.

45.8 Time Periods. All time periods specified in this Article may be extended by the mutual consent of the parties.

45.9 Appeal Procedure:

- A. Duties and Powers of the Brawley Employee Relations Commission. The duties and powers of the Commission shall be those proscribed by law and these rules.

General duties of the Commission are to:

- 1) Be the administrative appeals body in Teamsters, Local 542 personnel matters authorized by these rules. Said appellate authority includes appeals from actions involving:
 - a) Discipline of classified Teamsters, Local 542 employees with regular status.
 - b) Issuing final administrative rulings upon the appeal of a disciplinary matter.
- 2) Be the final arbitrator of an employee grievance pursuant to the grievance procedure set forth in the Memorandum of Understanding between the City of Brawley and Teamsters, Local 542.

The Commission shall have the power to:

- a) Administer oaths;
 - b) Subpoena witnesses and materials;
 - c) Make any necessary orders, in conjunction with an appeal, including but not limited to, back pay and classification adjustments;
 - d) Upon appeal, to affirm, revoke, or modify any disciplinary order, and may make any appropriate orders in connection with appeals under its jurisdiction. The Commission's decision shall be final and shall be followed by the City and Teamsters, Local 542 unless overturned by the Superior Court or Courts of Appeal. The Commission shall not have the authority to increase a proposed discipline of a Teamsters, Local 542 employee.
- B. Organization of the Commission. The Brawley Employee Relations Commission will consist of three persons who shall be residents of the City of Brawley. One Commissioner shall be appointed by the City and

one Commissioner shall be appointed by Teamsters, Local 542. The third Commissioner shall be appointed at the sole discretion of the two Commissioners appointed by the City and Teamsters, Local 542.

Each Commissioner shall serve a two year term beginning with the first Monday after ratification of this agreement by both parties and will continue to serve until the appointment and qualification of a successor or upon change as negotiated in subsequent agreements.

Any Commissioner may be removed only for cause. A Commissioner shall be removed upon the conviction of any felony or crime of moral turpitude. Further, a Commissioner shall be removed upon two consecutive unexcused absences from noticed Commission meetings.

Any vacancy on the Commission shall be filled within thirty (30) days of its occurrence by the party having the power to appoint a Commissioner to the vacant position for the unexpired term.

- C. Officers of the Commission. At the first meeting in July of each year, the Commission shall elect one member to act as Chairperson and one member to act as Vice Chairperson.
- D. Absence of Chairperson. During the absence of the Chairperson, the Vice Chairperson may temporarily serve as Chairperson.
- E. Quorum. Two Commissioners shall comprise a quorum to transact business at any meeting.
- F. Minutes of Meetings. The minutes of the proceedings of the Commission shall be prepared and maintained by a Commissioner appointed by the Chairperson on behalf of and subject to the approval of the Commission. The following shall be recorded in the minutes:
 - 1) The time and place of the meeting;
 - 2) The names of the Commissioners present;
 - 3) All official acts of the Commission and votes given by the Commissioners, except when the action is unanimous;
 - 4) A Commissioner's dissent with the supporting reasons, when requested by the dissenting Commissioner.

The minutes, or a true copy thereof, may be examined by interested parties at times and conditions proscribed by the Chairperson.

- G. Communications and Requests to the Commission. Communications and requests to the Commission shall be made in writing and the substance of

such request and the action taken by the Commission recorded in the minutes.

H. Meeting of the Commission. The Commission may convene the following types of meetings:

- 1) Regular meetings.
- 2) Appeal hearings.

All regular meetings of the Commission shall be open to the public. All appeal hearings shall be closed to the public except on the express waiver of the appellant.

I. Place of Meetings. The place of regular meetings and appeal hearings shall be at a place provided by the City.

J. Regular Meetings. Regular meetings of the Commission shall be held after public notice at the convenience of the Commission.

K. Appeal Hearings. Appeal hearings shall be called by the Chairperson within thirty (30) days of the filing of an appeal by an aggrieved employee or the Association.

45.10 Grievance Appeal for Classified Service

A. Classified Service. This rule shall be applicable to persons in the classified service subject to the terms of the Memorandum of Understanding between Teamsters, Local 542 and the City of Brawley, appointed to regular positions from eligible lists, who have successfully completed the probationary period for that position, including promotions.

- 1) Any of the following shall be deemed sufficient cause for suspension, demotion, transfer, or removal of any person:
 - a) That the employee is guilty of incompetency;
 - b) That the employee has been guilty of inefficiency;
 - c) That the employee has been guilty of insubordination;
 - d) That the employee has been guilty of dishonesty;
 - e) That the employee has been guilty of discourteous treatment of the public or other employees;

- f) That the employee has been convicted of a criminal offense involving moral turpitude, where the conviction shall be construed to be a conviction by a verdict, by pleas of guilty, upon judgment against the employee, upon a demurrer, or upon judgment of a court, a jury having been waived, without regard to subsequent disposition of the case by suspension of sentence, probation, or otherwise; including criminal convictions which result in the employee being unable to perform any and all duties or responsibilities relative to his/her position of regular employment. This section shall not apply to a conviction upon a plea of nolo contendere. The phrase "moral turpitude" shall be construed to mean any act of baseness, vileness, or depravity, or any act contrary to justice, honesty, or good morals; or any act done with deception or through corrupt motives;
 - g) That the employee, through negligence or willful misconduct, has caused damage to public property or waste of public supplies;
 - h) That the employee has been absent without leave, contrary to the rules of the applicable department, or has failed to report after leave of absence has expired, or after such leave of absence has been disapproved by the City; provided however that if such absence or failure to report is excusable, the Commission may dismiss the charges;
 - i) That the employee has been convicted of a felony in furtherance of, or while participating in, a riot or civil disorder;
 - j) That the employee has been guilty of negligence resulting in significant harm or significant risk of harm to the public or public service;
 - k) That the employee engages in conduct unbecoming a city employee while on duty in his/her capacity;
 - l) That the employee is found to be in violation of any verbal or written policy or procedure, memorandum, general order, or directive established by the City of Brawley.
- B. Before the appointing Authority files any order in writing which proposes punitive action against a Teamsters, Local 542 employee, the pre-removal safeguards to the extent required by Skelly v. State Personnel Board (1975) 15 Cal. 3d 194 shall be followed. These pre-removal safeguards must include:

- 1) Notice of proposed action;

- 2) Reasons therefore;
- 3) A copy of the charges;
- 4) An opportunity to examine any materials upon which the action is based, and the right to respond either orally or in writing to the Appointing Authority imposing the discipline. Pre-removal hearings shall be before the City Manager. At the employee's option, he/she may waive the right to a hearing before the City Manager and select a hearing before the Public Works Director. Such notice shall be given a reasonable period of time prior to the date the discipline is to be imposed.

5) Notice Given

- a) Before a person may be removed, suspended, or reduced in rank or compensation, the Appointing Authority shall serve on the person a written order stating the specific reasons for the disciplinary action. Said order shall contain specific charges set forth clearly and with such particularity as will enable the employee to understand the charges and answer to them.
- b) Each order of removal, suspension, or reduction in rank or compensation, shall contain in substantially the following language, notice of the employee's right to appeal to the Commission:

If you wish to appeal this order to the Brawley Employee Relations Commission, you must file such an appeal in writing with the Commission within twenty (20) days after this order is presented to you. Such an appeal must be in writing and delivered to the City Clerk at the Clerk's Office at City Hall.

- C. Request for a Hearing. An employee who has completed the required probationary period, who is removed, suspended, or reduced in rank or compensation, may, within twenty (20) calendar days after presentation of the order of removal, suspension, or reduction as herein before provided, appeal to the Brawley Employee Relations Commission from such order.
- D. Within twenty (20) days after notice of the disciplinary action has been served on the employee, an employee who wishes to appeal must file an answer to the charges with the Commission.

- E. Time for Hearing. The Commission shall, within thirty (30) days from the filing of said appeal, notice a date of the hearing thereof, and shall, without delay, fully hear
- F. Conduct of Hearing. The appellant shall be entitled to appear personally, produce evidence, and to have representation as stated in Article 45.7.B.11. The Appointing Authority may also be represented by counsel. All hearings shall be governed by these rules of practice and procedure. Technical rules of evidence shall not apply to such hearings, except that any evidence presented by either party shall be relevant to the issues before the Commission.
- G. Record. The proceedings will normally be tape recorded, however, either party at their own expense, may cause a court reporter to record the proceedings. Payment for production of transcript will be pursuant to Code of Civil Procedure Section 1094.6.
- H. Subpoenas. The Commission has the power to issue subpoenas and subpoenas duces tecum. The Chairperson or the Vice Chairperson of the Commission shall also sign such subpoenas for witnesses for the employee, upon employee's written request.
- I. An employee who has appealed to the Commission, or an attorney admitted to the practice of law in this state, and designated by such employee, or a designated employee representative, shall have the right to inspect any documents in the possession of or under control of the Appointing Authority which are relevant to such appeal and which would lead to admissible evidence at a hearing on such appeal (excluding information or materials considered confidential). The employee, or employee's attorney or employee representative, shall have the right to interview other employees having knowledge of the acts or omissions upon which the removal, suspension, or reduction in rank was based. Interviews with other employees and inspection of documents shall be at times and places reasonable for the employee and Appointing Authority.
- J. Burden of Proof. The Appointing Authority shall have the burden of proof. The Appointing Authority shall go first in presenting evidence and the appellant shall have right to cross-examine any witnesses presented. The appellant shall then have the right to produce any evidence in his or her behalf, and the Appointing Authority shall have the opportunity to cross-examine witnesses presented. All evidence presented must be relevant and a decision by the Commission cannot be based solely hearsay evidence. Upon the completion of evidence, the Appointing Authority shall have the opportunity to make final argument followed by final argument by the appellant.

- K. The findings and decisions of the Commission shall be final, and shall be certified to the City Manager from whose order the appeal is taken and shall forthwith be enforced and followed. The decision shall give notice of the time limits for judicial review as set forth in Code of Civil Procedure Section 1094.5.

ARTICLE 46 – RENEGOTIATION

46.1 In the event Teamsters, Local 542 or the City desires to “meet and confer” in good faith on the provisions of a successor Agreement, it shall serve upon the other party its written request to commence meeting and conferring in good faith. Negotiations shall begin at a time mutually agreeable to the parties.

ARTICLE 47 – PEACEFUL PERFORMANCE OF DUTIES

47.1 Teamsters, Local 542 and the employees covered by this MOU recognize and agree that the rendering of services to the community cannot under any circumstances or conditions be withheld, interrupted, or discontinued, and that to do so would endanger the health, safety, and welfare of the inhabitants thereof.

During the term of this MOU, neither Teamsters, Local 542 nor its agents nor any employee, for any reason, will authorize, institute, aid, condone, or engage in a slow down, work stoppage, strike, or any other interference with the work and statutory functions or obligations of the City.

Teamsters, Local 542 agrees that the City’s rights to deal with any violation of this Section include, without limitation, the administration of discipline, including discharge or suspension, and instituting appropriate action at law on any or all employees participating therein.

During the term of the MOU, neither the City nor its agents for any reason shall authorize, institute, aid, or promote any lockout of employees covered by this MOU.

ARTICLE 48 – CONCLUSIVENESS OF AGREEMENT

48.1 This Memorandum of Understanding contains all of the agreements of the parties, and may be amended or modified only by an agreement in writing signed by both parties. It is acknowledged that during the course of negotiations, both the City and Teamsters, Local 542 have had a full right and opportunity to make demands and proposals with respect to wages, hours, and other terms and conditions of employment.

CITY OF BRAWLEY

TEAMSTERS, LOCAL 542
BRAWLEY EMPLOYEES' ASSOCIATION



Rosanna Bayon Moore, City Manager

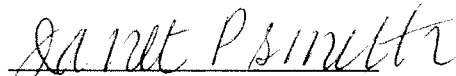
Date: 7/13/12



Ruth Duarte, Business Agent

Date: 7/12/12

ATTEST:



Janet Smith, Deputy City Clerk

APPENDIX “A” – SALARY PLAN

BRAWLEY EMPLOYEES’ ASSOCIATION
CLASSIFICATION, RANGES, AND
SALARY SCHEDULES

<u>CLASSIFICATION</u>	<u>RANGE</u>
Animal Control Officer.....	15
Engineering Technician II.....	22
Engineering Technician I.....	20
Utility Leadman	22
Utility Worker II	20
Utility Worker I.....	18
Mechanic.....	18
Mechanic’s Assistant	15
Sweeper Operator.....	18
Water Dist/Sewage Collection Sys Op.....	22
Landscape Worker.....	17
Water Plant Operator III	23
Water Plant Operator II.....	22
Water Plant Operator I.....	21
Water Plant Trainee	17
Wastewater Plant Operator III	23
Wastewater Plant Operator II.....	22
Wastewater Plant Operator I.....	21
Wastewater Plant Operator Trainee	17
Maintenance Leadman	19
Parks Maintenance Worker.....	17
Water Maintenance Worker	17
Wastewater Maintenance Worker.....	17

Appendix "A"
Effective 7/1/ 09
Brawley Employees Association
Salary Schedules

Range	Step 1	Step 2	Step 3	Step 4	Step 5
1	\$7.19	\$7.51	\$7.85	\$8.20	\$8.57
2	\$7.50	\$7.83	\$8.21	\$8.57	\$8.96
3	\$7.83	\$8.21	\$8.57	\$8.96	\$9.38
4	\$8.21	\$8.57	\$8.96	\$9.38	\$9.80
5	\$8.57	\$8.96	\$9.38	\$9.80	\$10.65
6	\$8.96	\$9.38	\$9.80	\$10.65	\$10.71
7	\$9.38	\$9.80	\$10.65	\$10.20	\$11.16
8	\$9.80	\$10.65	\$10.20	\$11.16	\$12.73
9	\$10.65	\$10.20	\$11.16	\$12.73	\$13.30
10	\$11.13	\$11.16	\$12.73	\$13.30	\$13.88
11	\$11.16	\$12.73	\$13.30	\$13.88	\$14.53
12	\$12.73	\$13.30	\$13.88	\$14.53	\$15.18
13	\$13.30	\$13.88	\$14.53	\$15.18	\$15.87
14	\$13.88	\$14.53	\$15.18	\$15.87	\$16.56
15	\$14.53	\$15.18	\$15.87	\$16.56	\$17.34
16	\$15.18	\$15.87	\$16.56	\$17.34	\$18.09
17	\$15.87	\$16.56	\$17.34	\$18.09	\$18.90
18	\$16.56	\$17.34	\$18.09	\$18.90	\$19.74
19	\$17.34	\$18.09	\$18.90	\$19.74	\$20.65
20	\$18.09	\$18.90	\$19.74	\$20.65	\$21.59
21	\$18.90	\$19.74	\$20.65	\$21.59	\$22.52
22	\$19.74	\$20.65	\$21.59	\$22.52	\$23.54
23	\$20.65	\$21.59	\$22.52	\$23.54	\$24.63